

Remarks

This amendment responds to the official action mailed December 8, 2010 and is timely due to an accompanying two month extension under 37 C.F.R. §1.136(a).

Claims 1, 2, 4, 5 and 7-15 are pending. Claim 1 is the only independent claim. Claims 4 and 5 were rejected as depending on cancelled claim 3. Claims 4 and 5 have been amended to depend from independent claim 1, thereby overcoming the grounds of rejection.

Claims 1, 2, 4, 13 and 14 were rejected as anticipated by WO 03/066975 - Malasorti, and claims 5, 7-12 and 15 were rejected as obvious over Malasorti, alone or in combination with US 893,770 - Wilson (considered in the last official action to disclose a box D that is smaller than a profile D¹); AT 006137 - Neher Bad (with a shower handset); or DE 20211780 - Keramische Werke (with side shower heads).

Reconsideration is requested. According to the official action and referring to Fig. 6, Malasorti discloses a flat profile with a rear wall that provides space for the fitting and the fitting is covered by the profile except for the handle of the fitting which extends into the profile and is activated from the front of the profile. It is not possible to construe the flange 9 of Malasorti, as simultaneously comprising walls on both the front and rear side of the profile and at the same time to construe the flange as both admitting and also covering the fitting. Malasorti's flange 9 is a single solid plate.

Flange 9 in Malasorti is a continuous and integrally solid plate but for the slot through which the operating handle extends. Malasorti does not meet the subject matter positively recited in claim 1. Malasorti does not provide a flat profile with two walls spaced by an interior, namely the front and rear sides of a hollow profile, the rear side admitting parts of a concealed fitting that is covered

by the front side of the profile and activated from the front side of the profile. It is not possible to read claim 1 on Malasorti's a single solid flange plate 9.

In the official action, the Examiner appears to construe the front and rear faces of Malasorti's solid flange 9 as front and rear sides of a profile. Original claim 8, however, recites that the profile has an interior, in particular providing an internal channel. Applicant has amended claim 1 to recite that the front and rear of the claimed profile are on walls spaced by an interior of the profile, i.e., there are two walls, on the front side and on the rear side of the profile. The claimed profile is hollow. Malasorti does not anticipate claim 1. Malasorti alone or in combination with the remaining cited references does not render obvious the invention claimed as a whole.

No new matter is presented. An interior between rear-side wall 2 and front-side wall 3 is plainly shown in Figs. 3-5, 6 and 8. The interior is specifically mentioned at paragraph [0037] of the application as published and recited in original claim 8. The provision of a space for accommodating piping or conduit space inside the profile is further found at paragraphs [0012], [0035] through [0038]. The specific term "wall" appears with respect to the profile rather than the building wall at least at paragraphs [0036], [0038] and [0040], referencing the front wall 3.

The amendment of claim 1 to recite that the front wall and the rear wall are spaced by an interior of the profile obviates the rejection over Malasorti and does not present a new issue requiring further consideration or search because the interior of the profile was already recited in claim 8. The rejection of claim 8 over a combination of Malasorti and Neher Bad is erroneous because the combination lacks a profile with an interior into which the fitting extends through the rear side of the profile and which fitting is covered by the front side and operated from the front.

Neher Bad was cited in the official action for disclosing a hand shower. Malasorti was relied upon in the rejection of claim 8, erroneously, as disclosing a profile with front and rear sides around an interior. Malasorti does not disclose that aspect, or the other aspects of claim 1 discussed above, including

the rear side of the profile admitting parts of a concealed fitting that is covered by the front side of the profile and activated from the front side.

Applicant accepts that Neher Bad discloses attaching a hand shower to a wall profile by a hose; that Wilson discloses a box having a cover plate (a solid flange) that is at least somewhat larger than the box that it covers; and, that Keramische Werke discloses side showers on a profile. However there is no combination of features selected from these references that would produce a profile as defined in applicant's claim 1 and/or claims 2, 4, 5 and 7-15, depending from claim 1, comprising front side and rear side walls separated by an interior, the rear side admitting parts of a fitting that extend through the rear side and are covered by the front side as well as operated from the front side. There is no basis to conclude that the invention claimed as a whole is anticipated or obvious from the prior art. On the contrary, the differences are such that the subject matter claimed as a whole is not shown to have been obvious.

The invention provides a significant advance over the prior art. In the prior art, one can construct a junction box set deeply into the structural building wall to accommodate the dimensions of a hot/cold mixing valve or other fitting, which characterizes Malasorti (see Figs. 5 and 6) and Wilson (Fig. 1). Alternatively, one can put such a mixing valve or other fitting inside a surface-mounted profile that disadvantageously occupies a considerable volume in the shower area, which characterizes Neher Bad (Fig. 4) and Keramische Werke (Fig. 2). Applicant's invention provides a different and unobvious solution wherein the fitting can protrude in part from a shallower inset in the structural building wall and is accommodated in part within the hollow interior of the claimed profile.

The grounds for rejection of claims 4 and 5 have been overcome. The final rejection of claim 8 has been shown to be erroneous for not meeting the invention claimed as a whole to include the interior space defined between the walls at the front and rear sides of the profile. The interior is now recited in independent claim 1, which positively distinguishes from the prior art of record.

The remaining claims depend directly or indirectly from claim 1. All pending claims are allowable as now presented.

Reconsideration and allowance are requested.

Respectfully submitted,

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